

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

**PAUL POGUE and
PAUL POGUE, in his capacity as
owner of SURVEYORS' PARK**

Plaintiffs,

v.

TONY CHANDLER, et al.,

Defendants.

CIVIL ACTION NUMBER

2:06-cv-148-MHT

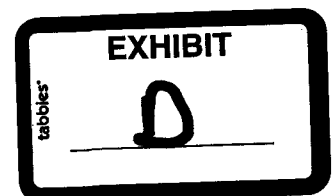
State of Alabama
County of Montgomery

AFFIDAVIT OF CHARLES T. CONWAY

Before me, a Notary Public in and for said County and State, personally appeared
Charles T. Conway and, after having been by me first duly sworn, deposes and says
under oath as follows:

1. My name is Charles T. Conway. In some filings related to this case I am identified as “Tom Conway.” I am over (19) nineteen years of age and have personal knowledge of the facts as are set out herein.

2. I am employed by the Alabama Forestry Commission as an Attorney. I have been designated an Assistant Attorney General for the State of Alabama. I am one of the attorneys representing the Defendants in this action.



3. I am aware that the Plaintiff stated in his deposition that he asked me to have the Defendants present on the day of the Plaintiff's deposition so the Plaintiff could take the Defendants' depositions on that day (Exhibit A to Defendants' Motion for Summary Judgment, Deposition of the Plaintiff, page 89, lines 10-19 and page 122, lines 2-13).

4. I can state categorically that the Plaintiff has never filed any notice of his intent to depose the Defendants. The Plaintiff's only statement to me in this regard was on the day I spoke to him by telephone to attempt to schedule his deposition. The Plaintiff made the comment, "Good. Maybe we can do all of our discovery on the same day." I did not believe that this statement put me under any obligation to have the Defendants present at the time of the Plaintiff's deposition.

5. On April 4, 2006, the Defendants filed a Motion to Drop Fictitious Parties and a Motion to Strike "Paul Pogue, in his capacity as owner of Surveyors' Park." The Plaintiff has not responded to either of these motions.

6. On August 11, 2006, I wrote a letter to the Plaintiff asking him to provide his initial disclosures pursuant to the Federal Rules of Civil Procedure (Attachment A). To this date, the Plaintiff has not provided the requested initial disclosures.

7. On August 21, 2006, the Defendants served a document entitled "Defendants' First Requests for Admission" upon the Plaintiff. (Attachment B). The Plaintiff has failed to respond to this request.

8. On August 21, 2006, the Defendants served a document entitled "Defendants First Request for Production of Documents" upon the Plaintiff. (Attachment C). The Plaintiff has failed to respond to this request.

9. On several occasions, mail sent to the Plaintiff by the Defendants and by the Court has been returned. The mail returned to the Defendants was marked "vacant" and "Return to Sender." (See Attachment D for one such example).


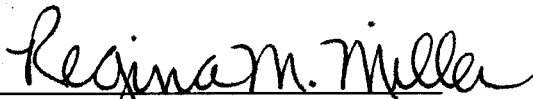


Charles T. Conway

SWORN TO and SUBSCRIBED BEFORE ME on this the 25 day of

September, 2006.

(SEAL)

Notary Public

My commission expires: Nov. 14, 2008

EXHIBIT D
ATTACHMENT A



TIMOTHY C. BOYCE
STATE FORESTER
RICHARD H. CUMBIE
ASST. STATE FORESTER

Making Alabama Better For Everyone



Alabama Forestry Commission
PO Box 302550 Montgomery, AL 36130-2550

August 11, 2006

Mr. Paul Pogue
301 Kahn Street
The Mays Building
Montgomery, Alabama 36104

Dear Mr. Pogue:

The Federal Rules of Civil Procedure require the parties in a civil action to exchange initial disclosures of certain information. We provided initial disclosures to you on behalf of Mr. Chandler and Mr. Clark on August 7, 2006. We would sincerely appreciate your providing your initial disclosures to us within seven days of the date of this letter. If we do not hear from you by then, we will assume that you do not intend to provide such disclosures.

Thank you in advance for your cooperation.

Sincerely,

Charles T. Conway
Assistant Attorney General

Cc: Jim Davis
Win Sinclair
File

EXHIBIT D
ATTACHMENT B, p. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
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PAUL POGUE and)
PAUL POGUE, in his capacity as owner of)
SURVEYORS' PARK,)

Plaintiffs,)

v.)

TONY CHANDLER, et al.,)

Defendants.)

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DEFENDANTS' FIRST REQUESTS FOR ADMISSION

Come now Defendants Tony Chandler and Danny Clark, pursuant to Rule 36 of the Federal Rules of Civil Procedure, and request the Plaintiff to admit or deny the matters below in the time and manner proscribed by the said rule.

Defendants note that Rule 36 states as follows:

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

EXHIBIT D
ATTACHMENT B, p. 2

Definitions

"Plaintiff," "you," and "your" shall refer to Paul Pogue, a/k/a Paul L. Pogue, the plaintiff in the above-styled action.

"Investigation" shall refer to the investigation conducted by the Alabama Forestry Commission and its agents into the alleged wrongful cutting of timber and which is referenced in your complaint.

"Timber" shall refer to that timber which was allegedly wrongfully cut in Perry County, Alabama, which was the subject of the Investigation and which is referenced in your complaint.

"Property" shall refer to that real property in Perry County, Alabama, on which the Timber was allegedly wrongfully cut.

Requests

1. Admit that Plaintiff is not a record owner of the Property.
2. Admit that Plaintiff did not own the Timber at the time that it was allegedly wrongfully cut.
3. Admit that the person, persons, or organizations that cut the Timber offered to make payment therefore to the owner or owners of the Timber.
4. Admit that the Plaintiff's spouse made a request of the Alabama Forestry Commission to investigate the cutting of the Timber.
5. Admit that the Alabama Forestry Commission or its agents conducted the

EXHIBIT D
ATTACHMENT B, p. 3

Investigation.

6. Admit that the Alabama Forestry Commission or its agents concluded that any dispute involving the cutting of Timber was a civil and not a criminal matter.
7. Admit that the Plaintiff cannot name any white person who has received better treatment from the Alabama Forestry Commission than was afforded the Plaintiff during the course of the investigation at issue in this complaint.




Charles T. Conway - CON029
Attorney for Defendants Chandler and Clark
P.O. Box 302550
Montgomery, Alabama 36130
Telephone: (334) 240-9342

EXHIBIT D
ATTACHMENT B, p. 4

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing on the Defendant on this the 21st day of August, 2006, by placing same in the United States Mail, first class postage prepaid and properly addressed as follows:

Mr. Paul Pogue
301 Kahn Street
The Mays Building
Montgomery, Alabama 36104



Charles T. Conway

EXHIBIT D
ATTACHMENT C, P. 1

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**DEFENDANTS' FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS**

Come now Defendants Tony Chandler and Danny Clark and request the Plaintiff to produce and permit the Defendants' attorneys to inspect and copy the documents described below in the time and manner provided by Rule 34 of the Federal Rules of Civil Procedure:

1. All deeds, contracts, agreements, tax notices, bills of sale, leases, wills or other documents which indicate whether you have an ownership interest in any property, real or personal, at issue in this complaint.

EXHIBIT D
ATTACHMENT C, P. 2

- issue.
7. All deposit slips, bank statements, or other records which would show that you received payment for the removal of timber from the property at issue.
 8. All documents related to any request made by you or on your behalf for the Alabama Forestry Commission or its agents to conduct an investigation.
 9. All documents related to any services provided by you, by the Alabama Constitutional Institute, or by any organization you work for, where such services were related to the Alabama Forestry Commission.
 10. All documents supporting your contention that the defendants discriminated against you, or any other person, on the basis of race.
 11. Each and every document not covered in paragraphs 1 – 10 above which would support your claims against the Defendants.

The Plaintiff is requested to notify the Defendants of a time and place the above-referenced documents may be inspected and copied. Alternatively, the Plaintiff may notify the undersigned counsel for the Defendants that the documents are ready for inspection and may produce them for copying at said counsel's office.

EXHIBIT D

ATTACHMENT C, P. 3

A handwritten signature in cursive script, appearing to read "Charles T. Conway".

Charles T. Conway - CON029

Attorney for Defendants Chandler and Clark

P.O. Box 302550

Montgomery, Alabama 36130

Telephone: (334) 240-9342

EXHIBIT D

ATTACHMENT C, p. 4

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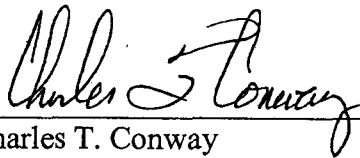

Charles T. Conway

EXHIBIT D
ATTACHMENT D

CONWAY



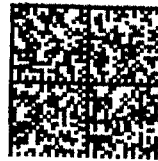
RETURN SERVICE REQUESTED

P O Box 302550
Montgomery, AL 36130-2550

ALABAMA FORESTRY COMMISSION

PAUL POGUE
301 KAHN STREET
THE MAYS BUILDING
MONTGOMERY AL 36104

36104+5333-01 C053

TO THE ADDRESSEE:
☐ VACANT
☐ NO MAIL RECEIPTABLE
R.T. _____ INT. _____02 1A
0004335354
MAILED FROM ZIP CODE 36104\$00.39⁰